

**ADMINISTRATIVE PROCEEDING  
BEFORE THE  
SECURITIES COMMISSIONER OF SOUTH CAROLINA**

<b>IN THE MATTER OF:</b>	)	
	)	<b>ORDER TO CEASE AND DESIST</b>
<b>Fred Auzenne and</b>	)	
<b>BioNovix Incorporated,</b>	)	
	)	
<b>Respondents.</b>	)	<b>File Number: 13104</b>
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**WHEREAS**, the Securities Division of the Office of the Attorney General of the State of South Carolina (the “Division”) has been authorized and directed by the Securities Commissioner of South Carolina (the “Securities Commissioner”) to administer the provisions of S.C. Code Ann. § 35-1-101, *et seq.*, the South Carolina Uniform Securities Act of 2005 (the “Act”); and

**WHEREAS**, the Division received information regarding alleged activities of Fred Auzenne (“Auzenne”) and BioNovix Incorporated (“BioNovix”) (collectively, the “Respondents”) which, if true, would constitute violations of the Act; and

**WHEREAS**, the information led the Division to open and conduct an investigation of Respondents pursuant to S.C. Code Ann. § 35-1-602; and

**WHEREAS**, the Division has determined the following:

**I. JURISDICTION**

1. The Securities Commissioner has jurisdiction over this matter pursuant to S.C. Code Ann. § 35-1-601(a).

**II. RESPONDENTS**

2. Respondent Auzenne is an Arizona resident with a last known address of 9236 East Desert Village Drive, Scottsdale, Arizona 85255.

3. Respondent BioNovix is a former Arizona Corporation with a last known address of 16410 N 91<sup>st</sup> Street, Suite 110, Scottsdale, Arizona 85260.

### **III. FINDINGS OF FACT**

4. Respondent BioNovix was a health care company, allegedly formed in order to develop and sell various health care products.

5. Beginning in 2006, Respondent Auzenne served as the Chief Executive Officer, an owner, and the control person of Respondent BioNovix.

6. In order to finance its operations, Respondent BioNovix offered shares of stock (the “Shares”) to numerous investors throughout the United States, including South Carolina.

7. The Shares were not registered with the Division or offered under a claim of an exemption from registration.

8. The agents engaged by Respondents to offer and sell the Shares were not registered with the Division or exempt from registration.

#### **A. Respondents’ Scheme**

9. In order to aid in the offer and sale of the Shares, Respondents engaged a self-proclaimed financial expert and purveyor of investment opportunities (the “Promoter”) to recommend the investment to her clients.

10. In addition to numerous books on the subject of “wealth-building,” the Promoter held various seminars (the “Seminar” or the “Seminars”) for investors wherein she and others offered various opportunities to invest in numerous companies.

11. Respondents engaged the Promoter to offer the Shares to the attendees at her Seminars and compensated her with either an offer of the Shares at a significantly discounted price or through the purchase of in excess of one hundred thousand dollars (\$100,000) worth of books, CDs, and other materials authored by the Promoter, or both.

B. The Scheme Ensnarers South Carolina Investors.

12. In 2006, two South Carolina investors (the “South Carolina Investors”), having read several of her books, contacted the Promoter and sought her investment advice.

13. Following several conversations with the Promoter, the South Carolina Investors chose to attend a Seminar in August of 2006 (the “August 2006 Seminar”), where various investment opportunities recommended by the Promoter would be offered to investors.

14. Respondent Auzenne also attended the August 2006 Seminar, wherein he and the Promoter offered the Shares to the South Carolina Investors and other attendees.

15. In connection with his offer and sale of the Shares in August 2006 and otherwise, Respondent Auzenne, on behalf of himself and Respondent BioNovix, made numerous false and misleading statements and omissions, including, but not limited to, the following:

- a. Falsely stating that the Shares represented an investment opportunity exclusively offered to Seminar attendees;
- b. Falsely stating that Respondent BioNovix had recruited an eminent Vanderbilt University scientist to serve on its “Scientific Advisory Board;”

- c. Omitting to disclose the significant contingent liability faced by Respondent BioNovix in light of its failure to register the Shares and the lack of applicability of any exemption from registration;
- d. Omitting to disclose that the Shares could not legally be offered for sale in one or more of the jurisdictions in which they were offered or sold;
- e. Omitting to disclose there was no reasonable basis for the projected return on investment figures given to Seminar attendees;
- f. Omitting to disclose that Respondents compensated the Promoter through direct payments, or the purchase of various materials authored by the Promoter, or both; and
- g. Omitting to disclose that the Shares represented a highly speculative investment.

16. Following the August 2006 Seminar, the South Carolina Investors purchased in excess of two hundred thousand dollars (\$200,000) worth of the Shares with the expectation that their investment would yield above-market returns of one thousand two hundred percent (1200%) within five (5) years.

17. Rather than the expected return of one thousand two hundred percent (1200%), the South Carolina Investors lost in excess of one hundred and seventy-eight thousand dollars (\$178,000) after their purchase of the Shares.

#### **IV. CONCLUSIONS OF LAW**

18. The South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101, *et seq.*, governs the offer and sale of securities in this State.

19. Pursuant to S.C. Code Ann. § 35-1-102(2), an agent is an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities, or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities.

20. Pursuant to S.C. Code Ann. § 35-1-102(29), stock, investment contracts, and certificates of interest or participation in profit-sharing agreements, *inter alia*, constitute securities.

21. Pursuant to S.C. Code Ann. § 35-1-301, it is unlawful for a person to offer or sell a security in this State unless that security is registered, a federal covered security, or exempt from registration.

22. Pursuant to S.C. Code Ann. § 35-1-402(a), it is unlawful for an individual to transact business as an agent in this State unless that individual is registered or exempt from registration.

23. Pursuant to S.C. Code Ann. § 35-1-402 (d), it is unlawful for an issuer, engaged in offering, selling, or purchasing securities in this State, to employ or associate with an agent who transacts business in this State on behalf of that issuer unless that agent is registered under S.C. Code Ann. § 35-1-402 (a).

24. Pursuant to S.C. Code Ann. § 35-1-501, it is unlawful for a person in connection with the offer or sale of a security in this State: (1) to employ a scheme, device, or artifice to defraud; (2) to make an untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were

made, not misleading; or (3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

25. Pursuant to S.C. Code Ann. §35-1-604(a)(1), if the Securities Commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act, the Securities Commissioner may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with the Act.

26. Pursuant to S.C. Code Ann. § 35-1-604(b), an order issued under § 35-1-604(a) is effective on the date of issuance and must include a statement of any civil penalty or costs of investigation the Division will seek, a statement of the reasons for the order, and notice that, within fifteen (15) days after the receipt of a request in a record from the Respondent, the matter will be scheduled for a hearing.

27. The Shares offered and sold by Respondents constitute securities as defined by the Act.

28. The Shares offered and sold by Respondents were neither federal covered securities, exempt from registration, nor registered with the Division and were therefore sold in violation of the Act.

29. Both Respondent Auzenne and the Promoter acted as agents in the offer and sale of the Shares to the South Carolina Investors on behalf of Respondent BioNovix.

30. Respondent BioNovix employed two unregistered agents in violation of the Act.

31. Respondents sold securities in this State: (1) while employing a scheme, device, or artifice to defraud; (2) through the making of untrue statements of material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and (3) by engaging in an act, practice, or course of business that operated as a fraud or deceit upon another person.

32. It is in the public interest, for the protection of investors, and consistent with the purposes of the Act that Respondents be ordered to cease and desist from engaging in the above enumerated practices which constitute violations of the Act and pay an appropriate civil penalty for their wrongdoing.

#### **V. CEASE AND DESIST ORDER**

**NOW THEREFORE**, pursuant to S.C. Code Ann. § 35-1-604(a)(1), it is hereby **ORDERED** that:

- a. Respondents and every successor, affiliate, control person, agent, servant, and employee of Respondents, and every entity owned, operated, or indirectly or directly controlled by or on behalf of the Respondents **CEASE AND DESIST** from transacting business in this State in violation of the Act, and, in particular, §§ 35-1-301, 35-1-402, and 35-1-501 thereof; and
- b. Respondent Auzenne pay a civil penalty in the amount of **One Hundred Thousand Dollars (\$100,000)** if this Order becomes effective by operation of law, or, if Respondent Auzenne seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to exceed **Ten**

**Thousand Dollars (\$10,000)** for each violation of the Act by Respondent Auzenne, and the actual cost of the investigation or proceeding; and

**IT IS FURTHER ORDERED** that, pursuant to S.C. Code Ann. § 35-1-604(a)(2) and (3), any exemption from registration with the Division that Respondents may claim to rely upon under S.C. Code Ann. §§ 35-1-201(3)(C), (7), or (8); 35-1-202; 35-1-401(b)(1)(D) or (F); or 35-1-403(b)(1)(C), has been and is **PERMANENTLY REVOKED**.

#### **VI. REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING**

The Respondents are hereby notified that they each have the right to a hearing on the matters contained herein. To schedule such a hearing, a Respondent must file with the Securities Division, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina, 29211-1549, attention: Thresechia Navarro, within thirty (30) days after the date of service of this Order to Cease and Desist, a written Answer specifically requesting a hearing. If a Respondent requests a hearing, the Division, within fifteen (15) days after receipt of a request in a record from a Respondent, will schedule the hearing.

In the written Answer, a Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

Failure by a Respondent to file a written request for a hearing in this matter within the thirty-day (30) period stated above shall be deemed a waiver by that Respondent of the right to such a hearing. Failure of a Respondent to file an Answer, including a request for a hearing,



shall result in this Order, including the stated civil penalty and any assessed costs, becoming final as to that Respondent by operation of law.

CONTINUING TO ENGAGE IN ACTS DETAILED BY THIS ORDER AND/OR SIMILAR ACTS MAY RESULT IN THE DIVISION'S FILING ADDITIONAL ADMINISTRATIVE ACTIONS AND/OR SEEKING FURTHER ADMINISTRATIVE FINES. WILLFUL VIOLATION OF THIS ORDER COULD RESULT IN CRIMINAL PENALTIES PURSUANT TO S.C. CODE ANN. § 35-1-508.

ENTERED, this the 20<sup>th</sup> day of February, 2014.

ALAN WILSON  
SECURITIES COMMISSIONER

By: Tracy Meyers  
TRACY A. MEYERS  
Assistant Deputy Attorney General

ISSUANCE REQUESTED BY:



IAN P. VESCHLER  
Assistant Attorney General  
Securities Division  
Rembert C. Dennis Building  
1000 Assembly Street  
Columbia, S. C. 29201